

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Mac Muir	Team: Squad #2	CCRB Case #: 201702755	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input checked="" type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Tuesday, 04/04/2017 1:00 PM	Location of Incident: § 87(2)(b)	Precinct: 28	18 Mo. SOL 10/4/2018	EO SOL 10/4/2018	
Date/Time CV Reported Tue, 04/04/2017 1:15 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Mon, 04/10/2017 11:21 AM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)
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§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. LT Sam Russo	00000	904971	028 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POF Millicent Sempermartinez	26196	946232	028 PCT
2. POM Carl Wesarg	19684	949795	028 PCT
3. POM Robert Marmolejos	00248	949253	028 PCT
4. POF Tammie Garcia	20329	929524	028 PCT
5. POM Ehsan Rahman	19678	959107	028 PCT

Officer(s)	Allegation	Investigator Recommendation
A.LT Sam Russo	Force: Lieutenant Sam Russo used a chokehold against § 87(2)(b)	§ 87(2)(b)
B.LT Sam Russo	Force: Lieutenant Sam Russo used physical force against § 87(2)(b)	§ 87(2)(b)
C.LT Sam Russo	Force: Lieutenant Sam Russo restricted § 87(2)(b) breathing.	§ 87(2)(b)
D.LT Sam Russo	Abuse: Lieutenant Sam Russo threatened § 87(2)(b) with the use of force.	§ 87(2)(b)
E.LT Sam Russo	Discourtesy: Lieutenant Sam Russo spoke discourteously to § 87(2)(b)	§ 87(2)(b)

Officer(s)	Allegation	Investigator Recommendation
F.LT Sam Russo	Abuse: Lieutenant Sam Russo searched the vehicle in which § 87(2)(b) § 87(2)(b) was an occupant.	
G.LT Sam Russo	Abuse: Lieutenant Sam Russo threatened to seize § 87(2)(b) § 87(2)(b)'s property.	
H.LT Sam Russo	Off. Language: Lieutenant Sam Russo made remarks to § 87(2)(b) § 87(2)(b) based upon his gender.	

Case Summary

On April 4, 2017, § 87(2)(b) § 87(2)(b) submitted the following complaint to the Internal Affairs Bureau (IAB) via telephone. On April 10, 2017, the complaint was received by the CCRB via IAB log #2017-12446. On April 12, 2017, § 87(2)(b) § 87(2)(b) filed a complaint about the same incident via the CCRB Call Processing System. The case is being closed more than 90 days after it was received because of the complexity of the incident and the large number of civilians and officers who were interviewed in regards.

At 12:38 p.m. on April 4, 2017, § 87(2)(b) § 87(2)(b) called 911 and stated that she found her § 87(2)(b) daughter, § 87(2)(b) laying in the bathtub and not breathing at § 87(2)(b) in Manhattan. EMT Captain § 87(2)(b) § 87(2)(b) EMT § 87(2)(b) and EMT § 87(2)(b) § 87(2)(b) responded along with Lieutenant Sam Russo, Police Officer Millicent Semper-Martinez, Police Officer Carl Wesarg, and Police Officer Robert Marmolejos of the 28th Precinct. While § 87(2)(b) was on the phone with 911, she reported that § 87(2)(b) had begun to breathe again. EMS treated § 87(2)(b) inside of the apartment and then brought her downstairs to an ambulance. During this time § 87(2)(b) father, § 87(2)(b) § 87(2)(b) drove from work to § 87(2)(b). In addition to § 87(2)(b) § 87(2)(b) his cousins § 87(2)(b) and § 87(2)(b) § 87(2)(b) his aunt § 87(2)(b) § 87(2)(b) and his mother, § 87(2)(b) § 87(2)(b) travelled to § 87(2)(b) as well.

At approximately 1:00 p.m., § 87(2)(b) § 87(2)(b) arrived at § 87(2)(b) and double-parked his vehicle across the street. § 87(2)(b) § 87(2)(b) ran to the ambulance and § 87(2)(b) After approximately two minutes, § 87(2)(b) § 87(2)(b) walked out of the ambulance and toward § 87(2)(b). He asked where § 87(2)(b) was. Lieutenant Russo and Police Officer Semper-Martinez walked toward § 87(2)(b) § 87(2)(b) walked away from the officers to his vehicle. Lieutenant Russo followed § 87(2)(b) § 87(2)(b) and said, “What the hell is your issue?” § 87(2)(b) § 87(2)(b) turned toward Lieutenant Russo and yelled, “What do you mean ‘What is my issue?’ That’s my daughter.” Lieutenant Russo stepped forward and allegedly placed both hands around § 87(2)(b) § 87(2)(b) neck (**Allegation A**). Lieutenant Russo allegedly squeezed § 87(2)(b) § 87(2)(b) neck for several seconds, and then pushed him backwards toward his vehicle (**Allegations B and C**). Lieutenant Russo allegedly placed his fists up, entered a “fighting stance,” and “aggressively” moved toward § 87(2)(b) § 87(2)(b) (**Allegation D**). § 87(2)(b) § 87(2)(b) entered a fighting stance too and asked, “Why did you touch me?” Lieutenant Russo allegedly repeatedly said, “You little motherfucker” (**Allegation E**). Police Officers Semper-Martinez, Wesarg, and Marmolejos stood in between Lieutenant Russo and § 87(2)(b) § 87(2)(b) § 87(2)(b) § 87(2)(b) held § 87(2)(b) § 87(2)(b) against a vehicle and repeatedly told him to “calm down.”

Police Officer Semper-Martinez told § 87(2)(b) § 87(2)(b) and § 87(2)(b) § 87(2)(b) to “take a breather” and they walked around the corner to § 87(2)(b) § 87(2)(b) and § 87(2)(b) § 87(2)(b). § 87(2)(b) § 87(2)(b) called 911 and was transferred to the Internal Affairs Bureau (IAB). While § 87(2)(b) § 87(2)(b) and § 87(2)(b) § 87(2)(b) were around the corner, Lieutenant Russo allegedly authorized the search of § 87(2)(b) § 87(2)(b) vehicle and threatened to have it towed (**Allegations F and G**). § 87(2)(b) § 87(2)(b) called § 87(2)(b) § 87(2)(b) by telephone. During that call, Lieutenant Russo allegedly told § 87(2)(b) § 87(2)(b) “I want an apology. You come and apologize to me as a man, [I’ll] let you go” (**Allegation H**). After approximately one hour, § 87(2)(b) § 87(2)(b) returned to his vehicle, where he

was issued a summons for disorderly conduct. He then drove to § 87(2)(b) Hospital for an asthma attack.

A week after the incident, § 87(2)(b) § 87(2)(b) was arrested for Obstruction of Governmental Administration because EMT § 87(2)(b) § 87(2)(b) complained that § 87(2)(b) § 87(2)(b) shoved her when he initially reached for § 87(2)(b) in the ambulance. § 87(2)(b), § 87(2)(a) 160.50

Exterior surveillance footage from § 87(2)(b) was obtained by the CCRB on April 11, 2017. The video showed the entire portion of the incident that took place in front of § 87(2)(b) including the altercation between § 87(2)(b) § 87(2)(b) and Lieutenant Russo and the search of § 87(2)(b) § 87(2)(b) vehicle. The full video is in IA#33 (Board Review 01). The most relevant portions of that footage have been copied from the original video and are embedded into four videos below. The first video depicts the initial confrontation between § 87(2)(b) § 87(2)(b) and Lieutenant Russo (embedded below). This video is also in IA #206 (Board Review 02).



201702755_20170927_1418_DM.mp4

The second video depicts § 87(2)(b) § 87(2)(b) interacting with officers as she attempts to take § 87(2)(b) § 87(2)(b) vehicle away and is prevented from doing so (embedded below). This video is also in IA #207 (Board Review 03).



201702755_20170927_1418A_DM.mp4

The third video depicts a male officer going into § 87(2)(b) § 87(2)(b) vehicle (embedded below). This video is also in IA #209 (Board Review 04).



201702755_20170927_1419_DM.mp4

The fourth video depicts Police Officers Garcia and Rahman going into § 87(2)(b) § 87(2)(b) vehicle (embedded below). This video is also in IA #208 (Board Review 05).



201702755_20170927_1429_DM.mp4

Cell phone camera footage was recorded by § 87(2)(b) § 87(2)(b) during the incident and two videos were obtained from her on August 29, 2017. This video showed the portion of the incident immediately following the altercation between § 87(2)(b) § 87(2)(b) and Lieutenant § 87(2)(b) (embedded below). The videos are also in IA #153 and IA #154 (Board Review 07) (Board Review 08).



201702755_20170829_1723A_DM.mov



201702755_20170829_1723_DM.mov

Mediation, Civil and Criminal Histories

- This case was not eligible for mediation because of the alleged chokehold.
- § 87(2)(b)
- As per the New York City Comptroller's Office, as of September 22, 2017, no Notice of Claim has been filed in regards to this incident (Board Review 10).

Potential Issues

- The investigation was unable to contact § 87(2)(b) unidentified co-worker, who, according to both § 87(2)(b) and § 87(2)(b) was present for the incident. Neither of them could recall his name or had his contact information.
- The investigation was unable to obtain contact information for § 87(2)(b) § 87(2)(b) § 87(2)(b) aunt. He did not have her contact information and her other family members did not provide it. Because of the commonness of her name and the lack of a date of birth, the investigation was unable to obtain her contact information via database searches.

Civilian and Officer CCRB Histories

- This is the first CCRB case involving § 87(2)(b) § 87(2)(b) (Board Review 11).
- Lieutenant Russo has been a member of the NYPD for twenty-four years and has fifteen prior CCRB allegations in seven cases with three substantiated allegations in two cases.
 - In CCRB Case #200103750, a refusal to provide name and shield number and an offensive language allegation were substantiated against Lieutenant Russo. In that case, then-Sergeant Russo responded to an incident in which he questioned a person about potential child abuse. During that conversation he repeatedly referred to the complainant as "Fucking Russian" and upon a request for his name and shield number, he gestured toward his shield with his middle finger. He pleaded guilty and was disciplined with a loss of 15 vacation days.
 - In Case #201701024, a force allegation was substantiated against Lieutenant Russo. The Board recommended a Command Discipline B. An NYPD disposition has yet to be given.

Findings and Recommendations

Allegations not pleaded

- § 87(2)(b) § 87(2)(b) alleged that he requested Lieutenant Russo's name and shield number after he was issued a summons. It is generally undisputed that in response, Police Officer Semper-Martinez provided § 87(2)(b) § 87(2)(b) with Lieutenant Russo's name. Consequently, a refusal to provide name and shield allegation is not pleaded in regards.

- § 87(2)(b) § 87(2)(b) alleged that Lieutenant Russo threatened to arrest him. In light of the fact that § 87(2)(b) § 87(2)(b) was issued a summons and was later arrested in regards to his actions prior to the alleged threat, no threat of arrest allegation was pleaded in regards.
- § 87(2)(b) § 87(2)(b) uncle, alleged that when § 87(2)(b) § 87(2)(b) was issued a summons, a female officer told § 87(2)(b) § 87(2)(b) that he could have been arrested. Because § 87(2)(b) § 87(2)(b) did not include this allegation in his verified statement. Consequently, a threat of arrest allegation is not pleaded in regards.

Allegation A - Force: Lieutenant Sam Russo used a chokehold against § 87(2)(b) § 87(2)(b)

Allegation B - Force: Lieutenant Sam Russo used physical force against § 87(2)(b) § 87(2)(b)

Allegation D – Abuse of Authority: Lieutenant Sam Russo threatened § 87(2)(b) § 87(2)(b) with the use of force.

This complaint was submitted over the phone to IAB on April 4, 2017 (Board Review 28). It was received by the CCRB on April 10, 2017. On April 12, 2017, § 87(2)(b) § 87(2)(b) filed a complaint about the same incident via the Call Processing System. § 87(2)(b) § 87(2)(b) a contractor who witnessed the incident and who did not know § 87(2)(b) § 87(2)(b) or his family, was interviewed at § 87(2)(b) § 87(2)(b) on April 11, 2017. § 87(2)(b) § 87(2)(b) provided a telephone statement on April 13, 2017 (Board Review 12), and was interviewed at the CCRB on April 19, 2017. § 87(2)(b) § 87(2)(b) § 87(2)(b) mother, provided a telephone statement on April 25, 2017 (Board Review 13). EMT § 87(2)(b) § 87(2)(b) and EMT § 87(2)(b) § 87(2)(b) who initially responded via ambulance to provide care to § 87(2)(b) § 87(2)(b) and § 87(2)(b) § 87(2)(b) § 87(2)(b) father, provided telephone statements on April 26, 2017 (Board Review 14) (Board Review 15) (Board Review 16). § 87(2)(b) § 87(2)(b) § 87(2)(b) uncle, provided a telephone statement on April 26, 2017 (Board Review 17), and was interviewed at the CCRB on May 1, 2017. § 87(2)(b) § 87(2)(b) the mother of § 87(2)(b) § 87(2)(b) daughter (§ 87(2)(b) § 87(2)(b) provided a telephone statement on August 4, 2017 (Board Review 18). § 87(2)(b) § 87(2)(b) § 87(2)(b) § 87(2)(b) cousin, provided a telephone statement on August 7, 2017 (Board Review 19), and was interviewed at § 87(2)(b) § 87(2)(b) in Manhattan on August 17, 2017. EMT Captain § 87(2)(b) § 87(2)(b) who responded to supervise the care of § 87(2)(b) § 87(2)(b) provided a telephone statement on September 6, 2017 (Board Review 20). § 87(2)(b) § 87(2)(b) cousin, provided a telephone statement on September 7, 2017 (Board Review 21).

Lieutenant Russo was interviewed at the CCRB on June 1, 2017. Police Officer Semper-Martinez and Police Officer William McKiver were interviewed at the CCRB on June 14, 2017. Police Officer Wesarg was interviewed at the CCRB on June 20, 2017. Police Officer Marmolejos was interviewed at the CCRB on June 21, 2017. Police Officer Tammie Garcia was interviewed at the CCRB on June 27, 2017. Police Officer Rahman was interviewed at the CCRB on June 29, 2017.

The general contours of this incident are undisputed. It is undisputed that at 12:38 p.m. officers and emergency personnel responded to an incident in which Cali § 87(2)(b) § 87(2)(b) an § 87(2)(b) § 87(2)(b) old, was found by her mother, § 87(2)(b) § 87(2)(b) in the bathtub and not breathing at § 87(2)(b) § 87(2)(b) Apartment § 87(2)(b) § 87(2)(b) in Manhattan. Lieutenant Russo, Police Officer Semper-Martinez, Police Officer Wesarg, and Police Officer Marmolejos were the first officers to arrive at the apartment. EMT Captain § 87(2)(b) § 87(2)(b) along with EMTs § 87(2)(b) § 87(2)(b) and § 87(2)(b) § 87(2)(b) responded to the apartment as well and they provided oxygen to § 87(2)(b) § 87(2)(b) § 87(2)(b) § 87(2)(b) grandmother,

arrived at the apartment as well. EMT Captain § 87(2)(b) EMT § 87(2)(b) EMT § 87(2)(b) Lieutenant Russo, and Police Officer Semper-Martinez walked downstairs and out of the building with § 87(2)(b) Police Officers Wesarg and Marmolejos stayed upstairs with § 87(2)(b) and § 87(2)(b) § 87(2)(b) EMT § 87(2)(b) and EMT § 87(2)(b) took § 87(2)(b) into the ambulance and rendered care for her as they prepared to go to the hospital. Lieutenant Russo and Police Officer Semper-Martinez walked to their vehicle and got inside. § 87(2)(b) § 87(2)(b) § 87(2)(b) § 87(2)(b) and § 87(2)(b) § 87(2)(b) arrived in a vehicle and parked. § 87(2)(b) § 87(2)(b) § 87(2)(b) father, arrived at § 87(2)(b) and double-parked behind a police vehicle. He got out of his car and ran directly to the ambulance where EMTs were caring for § 87(2)(b) He went into the ambulance for several minutes. When § 87(2)(b) § 87(2)(b) left the ambulance, he walked into the street. EMT Captain § 87(2)(b) walked from the ambulance to the police vehicle containing Lieutenant Russo and Police Officer Semper-Martinez, and complained about § 87(2)(b) § 87(2)(b) behavior. § 87(2)(b) § 87(2)(b) walked into the middle of the street and repeatedly yelled out asking where § 87(2)(b) was. Lieutenant Russo, Police Officer Semper-Martinez, and EMT Captain § 87(2)(b) walked across § 87(2)(b) toward § 87(2)(b) § 87(2)(b) Lieutenant Russo asked § 87(2)(b) § 87(2)(b) what his problem was. § 87(2)(b) § 87(2)(b) replied that his daughter had nearly drowned. Lieutenant Russo pushed § 87(2)(b) § 87(2)(b) Lieutenant Russo and § 87(2)(b) § 87(2)(b) faced each other with their fists raised. During this time, § 87(2)(b) § 87(2)(b) § 87(2)(b) and Police Officers Wesarg and Marmolejos walked out of § 87(2)(b) toward Lieutenant Russo and § 87(2)(b) § 87(2)(b) Police Officers Semper-Martinez, Wesarg, and Marmolejos stood between Lieutenant Russo and § 87(2)(b) § 87(2)(b) § 87(2)(b) was restrained by § 87(2)(b) § 87(2)(b) After several minutes, Police Officer Semper-Martinez instructed § 87(2)(b) § 87(2)(b) to “take a breather” and § 87(2)(b) § 87(2)(b) guided him to § 87(2)(b) § 87(2)(b) and § 87(2)(b) § 87(2)(b) and § 87(2)(b) § 87(2)(b) arrived at § 87(2)(b) shortly thereafter. § 87(2)(b) § 87(2)(b) and § 87(2)(b) § 87(2)(b) called IAB. While § 87(2)(b) § 87(2)(b) was away from his vehicle, Lieutenant Russo prevented § 87(2)(b) § 87(2)(b) family members, including § 87(2)(b) § 87(2)(b) from moving it, and he instructed officers to search for the keys to the vehicle. Multiple officers, including Police Officers Tammie Garcia and Ehsan Rahman, entered § 87(2)(b) § 87(2)(b) vehicle as they searched for his keys. Lieutenant Russo told § 87(2)(b) § 87(2)(b) family members that if § 87(2)(b) § 87(2)(b) wanted his vehicle back, he needed to return to § 87(2)(b) Ultimately § 87(2)(b) § 87(2)(b) returned to his vehicle, was issued a summons for disorderly conduct, and drove away.

§ 87(2)(b) § 87(2)(b) alleged that when Lieutenant Russo initially walked up to him, he said “What the hell is your issue?” In response, § 87(2)(b) § 87(2)(b) leaned forward and yelled, “What do you mean what is my issue? That’s my daughter in there.” Lieutenant Russo walked toward § 87(2)(b) § 87(2)(b) placed both hands out with his thumbs connected, grabbed § 87(2)(b) § 87(2)(b) by the neck, and squeezed for approximately five to ten seconds. Then he pushed § 87(2)(b) § 87(2)(b) against his vehicle. Police Officer Semper-Martinez and § 87(2)(b) § 87(2)(b) pushed Lieutenant Russo and § 87(2)(b) § 87(2)(b) apart. Lieutenant Russo put his hands and feet into a “fighting stance” and moved toward § 87(2)(b) § 87(2)(b) as though he wanted to fight. § 87(2)(b) § 87(2)(b) got into a “fighting stance” as well in order to protect himself.

§ 87(2)(b) § 87(2)(b) stated that § 87(2)(b) § 87(2)(b) ran towards § 87(2)(b) § 87(2)(b) in a manner that was not angry, but “as if to say, “What the hell is going on?”” Lieutenant Russo told § 87(2)(b) § 87(2)(b) to get away from her because she was crying. Then he reached out and “roughed § 87(2)(b) § 87(2)(b) up” by grabbing him around the neck with both hands for “not even two seconds” and pushing him hard.

EMT § 87(2)(b) stated that when § 87(2)(b) § 87(2)(b) left the ambulance, he said that he was going to “f-ing kill that ‘B’,” in reference to § 87(2)(b) § 87(2)(b). EMT § 87(2)(b) observed Lieutenant Russo and § 87(2)(b) § 87(2)(b) when they first exchanged words, but he did not see what happened after that.

EMT Captain § 87(2)(b) stated that when § 87(2)(b) § 87(2)(b) first ran to the ambulance, he told EMT § 87(2)(b) “Get out of my way you fucking nigga,” and when he left the ambulance he said, “I’m gonna kill that bitch.” Lieutenant Russo walked toward § 87(2)(b) § 87(2)(b) who said, “Fuck out of my way” (or something to that effect) and, “Don’t fucking grab me.” Then § 87(2)(b) § 87(2)(b) “lunged” at Lieutenant Russo and a “scuffle ensued.” EMT § 87(2)(b) was asked whether Lieutenant Russo made contact with § 87(2)(b) § 87(2)(b) neck, and replied that “everything happened so fast,” and that he “didn’t catch that.” He added that § 87(2)(b) § 87(2)(b) “threw a couple of punches at [Lieutenant Russo].”

§ 87(2)(b) § 87(2)(b) stated that she was in the ambulance and § 87(2)(b) § 87(2)(b) was “very emotional.” When he left the ambulance, he repeatedly said, “Where she at?” in an “aggressive” tone. Shortly thereafter she heard § 87(2)(b) § 87(2)(b) say, “He put his hands around my neck.”

§ 87(2)(b) § 87(2)(b) stated that § 87(2)(b) § 87(2)(b) was “hysterical” and yelled, “Oh, my daughter,” and, “Where she at, yo, fuck happened to my daughter?” Lieutenant Russo approached § 87(2)(b) § 87(2)(b) and told him to “shut the fuck up” and “calm down.” § 87(2)(b) § 87(2)(b) replied, “You shut the fuck up.” Lieutenant Russo grabbed § 87(2)(b) § 87(2)(b) and pushed him against a vehicle “like in a chokehold.”

§ 87(2)(b) § 87(2)(b) stated that as she walked out of the apartment complex, she observed Lieutenant Russo walk forward and “choke” § 87(2)(b) § 87(2)(b) for approximately one minute.

Lieutenant Russo stated that he was sitting in his vehicle with Police Officer Semper-Martinez when he heard a voice say, “I’m going to fuck somebody up. I can’t believe that bitch did that.” EMT Captain § 87(2)(b) knocked on Lieutenant Russo’s window and told him that a man had knocked an EMS worker to the ground and pulled the oxygen mask off of a baby. He added that the man was screaming that he wanted to fight, saying that he had a bad temper, and saying that he was going to “fuck somebody up.” Lieutenant Russo walked to within six feet of § 87(2)(b) § 87(2)(b). Lt. Russo initially stated that, at this point, § 87(2)(b) § 87(2)(b) “charged” at him. However, when asked to describe the “charge,” he stated that all he recalled was that § 87(2)(b) § 87(2)(b) moved towards him but he did not remember how § 87(2)(b) § 87(2)(b) moved toward him. Lieutenant Russo expected § 87(2)(b) § 87(2)(b) to hit him because he had been acting violently, so “instead of waiting” for § 87(2)(b) § 87(2)(b) to hit him, he pushed him back in order to “give [him]self space.” Lieutenant Russo stated that he pushed § 87(2)(b) § 87(2)(b) in the chest. Both before and after viewing the surveillance footage of the incident, Lieutenant Russo denied having touched § 87(2)(b) § 87(2)(b) neck. He described the place he touched § 87(2)(b) § 87(2)(b) as the “upper chest” beneath the neck. Both before and after reviewing the surveillance footage during his CCRB interview, Lieutenant Russo stated that § 87(2)(b) § 87(2)(b) went into a fighting stance and that Lieutenant Russo put up his hands to protect himself in response to § 87(2)(b) § 87(2)(b) raising his fists.

The Threat Resistance or Injury Incident (TRI) Worksheet that was completed by Lieutenant Russo in regards to this incident indicates that a hand strike was used by an officer against § 87(2)(b) (Board Review 22). The reasons for taking this action were listed as “Overcome Resistance or Aggression” and “Defense of Self.” It did not indicate where Lieutenant Russo made contact with § 87(2)(b). The ‘Force Against MOS’ section indicated that a “Hand Strike” was used against Lieutenant Russo. However, during his CCRB interview, Lieutenant Russo stated that this form had been input incorrectly and that no hand strike had been used against him.

Lieutenant Russo’s memo book (Board Review 22) reflected that an EMT approached officers in regards to § 87(2)(b) “confronting” an EMT and yelling and cursing and refusing to let EMTs perform CPR on a female baby that had a breathing problem, and that § 87(2)(b) “charged” at Lieutenant Russo “to hit [him].” Lieutenant Russo “stepped the attack.”

The surveillance footage obtained from § 87(2)(b) (embedded below) (Board Review 29) shows that § 87(2)(b) emerged from the ambulance, walked toward § 87(2)(b) and then walked to his vehicle over the course of fifteen seconds. There was no audio attached to this video. § 87(2)(b) placed his arm around § 87(2)(b) as he reached his vehicle. Lieutenant Russo walked across the intersection with Police Officer Semper-Martinez and § 87(2)(b) and the three of them partially encircled § 87(2)(b) as he entered the front driver’s side area of his vehicle. Lieutenant Russo stepped to within approximately three feet of § 87(2)(b) and it appeared that the two of them were speaking. § 87(2)(b) tossed his jacked toward his vehicle and then stepped to his left. Lieutenant Russo took a full step toward § 87(2)(b) reached with arms outstretched, and quickly grabbed § 87(2)(b) by the neck with both hands and pushed forward. His hands appeared to be completely wrapped around the front and sides of § 87(2)(b) neck for approximately one second as he pushed § 87(2)(b) backward. § 87(2)(b) took four steps backwards. Lieutenant Russo stepped toward § 87(2)(b) and raised his fists in a boxing stance. In response, § 87(2)(b) spread his legs and entered a boxing stance with his fists raised. Both Lieutenant Russo and § 87(2)(b) bounced on their toes in boxing stances with their shoulders squared to each other. After five to seven seconds, § 87(2)(b) grabbed § 87(2)(b) and pulled him away. Police Officer Semper-Martinez placed her hand on Lieutenant Russo’s chest, prevent him from approaching § 87(2)(b). There was no additional physical contact between Lieutenant Russo and § 87(2)(b).



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A cropped and zoomed version of the above video shows the initial physical interaction between § 87(2)(b) and Lieutenant Russo in more detail (embedded below). The video is in IA#34 (Board Review 06).



201702755_20170421_1644_DM.mp4

The video footage provided by § 87(2)(b) § 87(2)(b) (embedded above in the Case Summary section as files 201702755_20170829_1723A_DM.mov and 201702755_20170829_1723_DM.mov) shows § 87(2)(b) § 87(2)(b) several minutes after the incident, stating that Lieutenant Russo “choked the shit out of [him].”

Lieutenant Russo stated that he did not touch § 87(2)(b) § 87(2)(b) neck. The surveillance footage of the incident appears to show that Lieutenant Russo grabbed § 87(2)(b) § 87(2)(b) by the neck, and that § 87(2)(b) § 87(2)(b) did not appear to charge at Lieutenant Russo before this happened. § 87(2)(b), § 87(2)(g)

§ 87(2)(b) § 87(2)(b). Immediately thereafter, Lieutenant Russo went into a boxing stance while stepping further towards § 87(2)(b) § 87(2)(b). Lieutenant Russo stated that § 87(2)(b) § 87(2)(b) put his hands up first, but the surveillance footage appears to show that Lieutenant Russo entered a boxing stance before § 87(2)(b) § 87(2)(b) who followed suit.

Aside from his estimates of the length of time that Lieutenant Russo’s hands were on his neck, § 87(2)(b) § 87(2)(b) account of both his actions and the actions of Lieutenant Russo during this portion of the incident were corroborated by the surveillance footage. Inversely, the footage disputes Lieutenant Russo’s account that § 87(2)(b) § 87(2)(b) was the one who closed the gap between them and does not support his conclusion that he was in imminent danger of being struck by § 87(2)(b) § 87(2)(b).

According to Patrol Guide Procedure 221-01, officers are allowed to use reasonable physical force when it is reasonable to ensure the safety of a member of service (Board Review 23). In determining whether the use of force is reasonable, members of the service should consider the following factors: a) The nature and severity of the crime/circumstances b) Actions taken by the subject c) Duration of the action d) Immediacy of the perceived threat or harm to the subject, members of the service, and/or bystanders e) Whether the subject is actively resisting custody f) Whether the subject is attempting to evade arrest by flight g) Number of subjects in comparison to the number of MOS h) Size, age, and condition of the subject in comparison to the MOS i) Subject’s violent history, if known j) Presence of hostile crowd or agitators. In addition, officers shall not use a chokehold. A chokehold is defined as any pressure to the throat or windpipe, which may prevent or hinder breathing or reduce intake of air.

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

[REDACTED]

§ 87(2)(b), § 87(2)(g)

[REDACTED]

Allegation C - Force: Lieutenant Sam Russo restricted § 87(2)(b) breathing.

As stated above, § 87(2)(b) § 87(2)(b) alleged that Lieutenant Russo choked him for five to ten seconds and that he immediately felt “out of breath.” When he went around the corner with § 87(2)(b) § 87(2)(b) he took a puff from his inhaler in order to catch his breath.

§ 87(2)(b) § 87(2)(b) stated that when he went to speak with § 87(2)(b) § 87(2)(b) at § 87(2)(b) § 87(2)(b) § 87(2)(b) § 87(2)(b) appeared to be having an asthma attack. He could tell that

he was breathing poorly because had seen § 87(2)(b) § 87(2)(b) asthma before. He added, “Any time § 87(2)(b) gets upset that asthma flares up.” § 87(2)(b) § 87(2)(b) told § 87(2)(b) § 87(2)(b) that his asthma was affecting him. § 87(2)(b) § 87(2)(b) did not notice any symptoms other than § 87(2)(b) § 87(2)(b) “bad” breathing.

After the incident, § 87(2)(b) § 87(2)(b) went to § 87(2)(b) Hospital because of his asthma. The medical records noted that § 87(2)(b) § 87(2)(b) complained that his asthma had affected him since that morning because his asthma attacks usually followed it raining. § 87(2)(b) § 87(2)(b) did not mention anything to the doctors regarding his daughter’s near-death or an altercation with the officers several hours prior (Privileged Documents).

§ 87(2)(b), § 87(2)(g)

Allegation E – Discourtesy: Lieutenant Sam Russo spoke discourteously to § 87(2)(b) § 87(2)(b)

In his initial 911 call, § 87(2)(b) § 87(2)(b) alleged that when Lieutenant Russo first approached him, he said to § 87(2)(b) § 87(2)(b) “What the fuck you screaming for?” and that after Lieutenant Russo choked him, he said, “Calm the fuck down. Who the fuck you talking to?” In his telephone statement, § 87(2)(b) § 87(2)(b) alleged that during their altercation, Lieutenant Russo called him, “You little motherfucker,” ten to fifteen times. In his verified statement, he alleged that Lieutenant Russo said, “You little motherfucker,” approximately seven to ten times and that Lieutenant Russo said, “You little motherfucker,” so many times that § 87(2)(b) § 87(2)(b) could not pay attention to anything else he said.

Of the other civilians who were present and in position to hear what was said, EMT Captain § 87(2)(b) did not know whether Lieutenant Russo called § 87(2)(b) § 87(2)(b) “you little motherfucker” because his attention was focused on the bystanders, on his staff, and on getting § 87(2)(b) to the hospital. § 87(2)(b) § 87(2)(b) was asked whether Lieutenant Russo said, “you little motherfucker,” and he replied that he remembered him “cursing like that” but could not specifically remember what Lieutenant Russo said. § 87(2)(b) § 87(2)(b) recalled that Lieutenant Russo said, “You little motherfucker,” multiple times, but could not recall how many times he said it. She added, “The f-word he said a lot.” She could not remember how many times he said, “Fuck.” § 87(2)(b) § 87(2)(b) was “hysterical” because § 87(2)(b) had nearly died, and did not specifically remember anything anyone said.

Police Officer Semper-Martinez did not remember whether Lieutenant Russo called § 87(2)(b) § 87(2)(b) “you little motherfucker.” When asked whether he said this seven to ten times, she replied, “No.”

Police Officer Marmolejos was asked whether Lieutenant Russo said, “You little motherfucker,” and he replied, “Possibly.” When he was asked to elaborate, Police Officer Marmolejos stated that it was a chaotic situation and that Police Officer Marmolejos’ focus was on § 87(2)(b) § 87(2)(b)

“abandoned.” Because they were abandoned, Lieutenant Russo attempted to determine who they belonged to. Lieutenant Russo did not remember anything about two of the three cars. He only remembered a Jeep with North Carolina license plates, which he later learned belonged to § 87(2)(b). Lieutenant Russo stated that he instructed other officers to look for the keys to the vehicle because they were going to voucher it to determine its “true owner.” Consequently, those officers went into § 87(2)(b) vehicle to look for the keys. Lieutenant Russo thought that if the officers were unable to recover the keys the vehicle, they were going to tow it. Lieutenant Russo told § 87(2)(b) family members that if the owner did not return to the vehicle, it was going to be taken in order to determine the “true owner.”

Police Officer Semper-Martinez stated that after the altercation between Lieutenant Russo and § 87(2)(b) she instructed § 87(2)(b) to take § 87(2)(b) around the corner so that he would be farther from Lieutenant Russo. § 87(2)(b) took § 87(2)(b) around the corner. Police Officer Semper-Martinez did not know of any point at which officers returned to retrieve § 87(2)(b).

The surveillance footage from § 87(2)(b) (embedded above as file 201702755_20170927_1419_DM.mp4) showed an officer entering § 87(2)(b) vehicle after § 87(2)(b) was prevented from taking it. Later, Police Officers Garcia and Rahman entered § 87(2)(b) vehicle and appear to search around the front driver’s side and front passenger side areas of the vehicle, respectively.

After an individual exits a vehicle, if there is no “actual and specific” threat to the safety of the officer, or any further justification, such as probable cause that it contains evidence or contraband, to search the vehicle, such a search is unlawful, People v. Hackett, A.D.3d.1122 (2008) (Board Review 25). Whenever a police officer finds a vehicle unattended where it constitutes an obstruction to traffic, or any place where stopping, standing, or parking is prohibited, such officer is authorized to remove that vehicle, VTL §1204.

§ 87(2)(b), § 87(2)(g)

[REDACTED]

§ 87(2)(b), § 87(2)(g)

[REDACTED]

§ 87(2)(b), § 87(2)(g)

Allegation I – Offensive Language: Lieutenant Sam Russo made remarks to § 87(2)(b) § 87(2)(b) based on his gender.

During § 87(2)(b) § 87(2)(b) initial IAB Intake call, which took place during the incident, he asked someone, “Are they giving you the car?” A female voice replied, “He said, “If § 87(2)(b) don’t come back and apologize to him like a man...” In response, § 87(2)(b) § 87(2)(b) cut the voice off and said, “Look. You hear this? You hear this?” In his telephone statement, he said that § 87(2)(b) § 87(2)(b) told him that Lieutenant Russo said that he needed to “apologize like an adult.” In his sworn statement, § 87(2)(b) § 87(2)(b) stated that while he was at § 87(2)(b) § 87(2)(b) as was on the phone with § 87(2)(b) § 87(2)(b) he heard Lieutenant Russo said, “I want an apology. You come and apologize to me as a man, [I’ll] let you go.”

In her telephone statement, § 87(2)(b) § 87(2)(b) stated that Lieutenant Russo told her that § 87(2)(b) § 87(2)(b) needed to “come back and apologize like a man.” In her sworn statement, she stated that told her, “...if he comes back and apologizes like a man, then he can get [his vehicle].”

Lieutenant Russo did not recall whether he asked § 87(2)(b) § 87(2)(b) for an apology. He was asked whether he asked to § 87(2)(b) § 87(2)(b) to apologize to him as “a man,” and he replied, “I don’t recall.”

According to Patrol Guide 203-09, members of service must be discourteous and respectful (Board Review 26).

§ 87(2)(b), § 87(2)(g)

Squad 2

Investigator: _____
Signature Print Date

Squad Leader: _____
Title/Signature Print Date

Reviewer: _____

Title/Signature

Print

Date